

4. Defendant Joseph M. Radcliff (“Radcliff”) is an individual who resides in or around Orlando, Florida. Radcliff is the founder and CEO of defendants XactLink and Fortuna, and is a former business associate turned competitor of AccuLynx’s CEO, Richard W. Spanton, Jr.

5. Defendants XactLink and Fortuna do business as “XactLink” and “XactLink.com.” Doing business as XactLink, defendants transact business throughout the United States, including the Northern District of Illinois, Western Division.

JURISDICTION

6. This case includes counts under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, Digital Millennium Copyright Act, 17 U.S.C. § 1202, *et seq.*, and the Lanham Act, 15 U.S.C. § 1125, *et seq.* This Court has original jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 & 1338(a). The Court has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367(a), since the Illinois deceptive practices claim is so closely related to claims that are within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

7. Venue is proper within the Northern District of Illinois pursuant to 28 U.S.C. §§ 1391(b) & (c), and 28 U.S.C. § 1400(a) because a substantial part of the events giving rise to these claims occurred within this district. Defendants’ publicly accessible and interactive website “enters” Illinois and actively solicits business with Illinois consumers by displaying content that was intentionally and unlawfully removed from an Illinois corporation’s website. In addition, defendants have engaged in this activity with the intent to injure plaintiff, an Illinois corporation that directly competes with defendants for consumers in northern Illinois and throughout the United States.

BACKGROUND FACTS

8. AccuLynx is a company based in Rockton, Illinois, that was founded by Richard W. Spanton, Jr. ("Spanton"), a local entrepreneur with a track record of success in the roofing industry. Over several years, Spanton developed proprietary software for managing his nationwide roofing business, which he realized had the potential to benefit the entire roofing industry.

9. Beginning in 2006, Spanton focused his efforts on commercializing this software, which entailed hiring a team of software engineers, and an investment of over \$4,000,000. That investment and effort lead to the formation of AccuLynx, a company that licenses a comprehensive business management software system for roofing contractors. As used herein, AccuLynx.com refers to Acculynx's web-based software product.

10. AccuLynx.com is an online program for the roofing and construction industries that provides efficient online project management, logistics, estimating, scheduling, and accounting. AccuLynx.com uses state of the art cloud computing technology and integrates with other software programs, such as Google Maps, Google Calendar and Quickbooks.

11. With the commercial launch of web-based software in 2009, AccuLynx has developed a unique niche in the marketplace through extensive marketing and has earned widespread brand recognition. In addition, by providing its customers with a high quality, easy to use, cost-effective product, AccuLynx has developed an invaluable reserve of customer good will. It currently has approximately 1,300 users in 30 states and in Canada.

12. In addition to expending a great deal of time and money in the course of developing AccuLynx.com, plaintiff committed significant resources to market and create unique written descriptions of the pricing, benefits, and operations of AccuLynx.com. This written content was at

all times relevant displayed on AccuLynx.com along with the requisite forms of copyright notice (copyright symbol, year of first publication, and name of the owner of the copyright, ExactLogix, Inc.), indicating the protected nature of these written works, and constituting “copyright management information” under the Digital Millennium Copyright Act, 17 U.S.C. § 1202.

13. To further protect its rights in its original works of authorship, plaintiff took steps to register the entire content of AccuLynx.com with the U.S. Copyright Office. (*See* proof of copyright registration, attached hereto as Ex. A). The entire content of AccuLynx.com which was the subject of copyright registration is attached hereto as Ex. B.¹

14. Also to protect its original works of authorship, plaintiff has at all times relevant displayed the following privacy policy on AccuLynx.com:

All data and information on this Site and delivered through this Site is the sole property of the Provider [AccuLynx.com]. UNDER NO CONDITION DOES ANY USER OR CUSTOMER GAIN TITLE TO THE DATA AND INFORMATION PROVIDED THROUGH THIS SITE. NO CUSTOMER OR USER MAY TRANSFER, DISTRIBUTE, SUBLICENSE, SELL, DISSEMINATE OR MAKE AVAILABLE ANY OF THE DATA OR INFORMATION FROM THIS SITE WITHOUT THE EXPRESS CONSENT OF THE PROVIDER. . . . Users and customers of the Site acknowledge and accept civil and/or criminal liability for any actions that violate the security of the Site and the intellectual property of the Provider. . . .

(AccuLynx.com Privacy Policy, a copy of which is attached as Ex. C).

15. In addition, plaintiff registered its trademark rights in the name “AccuLynx,” which was first used in commerce in February, 2009, and plaintiff is the exclusive owner of the common law trademark rights in the name “ExactLogix.” (Proof of trademark registration is attached hereto

¹ Exhibit B is being submitted to the Court on a compact disk. This manner of filing the exhibit allows the Court to review the attached web page archive files (MHTML files) in a web browser. The compact disk also contains a MHTML file version of Exhibit F. *See* footnote 3.

as Ex. D).

16. Fortuna and XactLink were formed in November, 2010, by Radcliff, a former business associate of Spanton's. Spanton and Radcliff had a falling out in 2003, and have had an acrimonious relationship ever since. For the last several years they have been direct competitors in the roofing industry. Spanton's nationwide roofing business is Mastercraft Exteriors, Inc., and Radcliff has done business under a variety of business names, including Coastal Property Management LLC d/b/a CPM Construction. However, following an investigation into insurance fraud by authorities in Indianapolis, Indiana, related to Radcliff and CPM's practices, Radcliff adopted a business name very similar to Spanton's Mastercraft business name, and began doing business as "Master Built Construction." In the process, Radcliff copied significant content from Mastercraft's website and posted it on Master Built's website.²

17. Having witnessed the successful launch of AccuLynx.com and familiarized himself with the website and business model, Radcliff formed Fortuna and XactLink in November, 2010, for the purpose of competing with AccuLynx. In November and December 2010, defendants began to promote their competing business online. Defendants launched their competing website, XactLink.com, in January, 2010.

18. However, rather than independently developing a competing program, Radcliff elected to essentially copy AccuLynx's name, business model, website, and marketing content and pass it off as his own.

19. For example, defendants unlawfully and in violation of AccuLynx's rights:

² Though actionable, Radcliff and Master Built's piracy of Mastercraft's web content is not the subject of this suit and is mentioned only to place Radcliff's most recent conduct into context and demonstrate Radcliff's pattern and practice of unfair competition and copyright infringement.

- (a) adopted a confusingly similar trade name;
- (b) without authorization, copied and created derivative works from copyrighted content from plaintiff's website, AccuLynx.com, and passed it off as its own on a marketing website known as SBTV.com;
- (c) without authorization, copied and created derivative works from copyrighted content from plaintiff's website, AccuLynx.com and passed it off as its own on its website, XactLink.com;
- (d) cut content from plaintiff's press release and pasted that content into a press release issued under the name XactLink.com (with minor revisions).

The adoption of a confusingly similar yet fanciful trade name

20. Defendants named their competing venture "XactLink," taking the "Xact" from plaintiff's corporate name, ExactLogix, and "Link" from plaintiff's assumed name AccuLynx. The terms "exact" and "accurate" are synonymous. The terms "link" and "lynx" are substantially similar, and can be understood to be the singular and plural version of the same word when spoken. In addition: the first initial of the second word in each name is capitalized; the two-word names are both run together without any spacing; and both names are three syllables long. When one types "XactLynx" into Google, it asks the user "did you mean Xact Link?" Finally, all of the constituent letters in "XactLink" can be found in "ExactLogix" and "AccuLynx," with the exception of the letter "k." These fanciful trade names are very similar, such that the potential for consumer confusion is obvious.

Copyright Infringement – Passing off AccuLynx's content as XactLink's on SBTV.com

21. On December 16, 2010, defendants posted a version of AccuLynx's "benefits" page on a third party marketing website, SBTV.com, again replacing AccuLynx's name with XactLink's name and removing AccuLynx's copyright notice information. (Compare Acculynx's Benefits page, Ex. E, with the XactLink Benefits page posted on SBTV.com at <http://cs.sbtv.com/Post/?id=5375>,

attached as Ex. F).

22. When defendants copied AccuLynx.com's benefits page and attempted to convert it into XactLink's benefits page for loading onto SBTV.com, defendants changed the "Remember, you can try AccuLynx FREE for 30 days!" link at the bottom of the Benefits page to read "Remember, you can try XactLink FREE for 30 days!" (Compare Acculynx's Benefits page, Ex. E, with XactLink's SBTV.com advertisement, attach as Ex. F³).

23. However, the computer code behind that free trial hyperlink was not changed and, when clicked, continued to direct people from XactLink's SBTV.com benefits page to Acculynx.com for a free trial, falsely suggesting a relationship or affiliation between XactLink and AccuLynx, when none actually exists.

24. The existence of this hyperlink on Xactlink's SBTV.com page, which directed consumers from XactLink to AccuLynx's website, conclusively demonstrates the fact that defendants accessed and copied AccuLynx's content, changed the AccuLynx name to XactLink, removed AccuLynx's copyright notice, and posted the pirated content online, falsely taking credit for the authorship of AccuLynx's protected content. This not only infringed AccuLynx's copyright in the content, but had the clear purpose and likely result of causing confusion or mistake as to the affiliation and connection of AccuLynx and XactLink or the sponsorship or approval of XactLink's services by AccuLynx.

Copyright Infringement– Passing off the content of AccuLynx.com on XactLink.com

³ Exhibit F is being filed both as a printout attached to the Verified Complaint, and as a MHTML file saved to the compact disc, which also contains Ex. B (the copyrighted content of AccuLynx.com). This allows the court to actually click the hyper link described above within that MHTML document saved to the compact disk as Ex. F, which will open a web browser that directs the user to AccuLynx.com.

25. Defendants directly pirated content from AccuLynx.com, removed the copyright notice (copyright symbol, year of first publication, and name of the owner of the copyright, ExactLogix, Inc.), and replaced any reference to AccuLynx with a reference to XactLink and/or Fortuna, without plaintiff's knowledge or consent.

26. Defendants even went so far as to affix their own copyright notice to the misappropriated content, falsely claiming authorship of AccuLynx's work.

27. For example, compare the "Pricing" page from Acculynx.com with that of XactLink.com, excerpts of which are quoted below.

[The remainder of this space was left intentionally blank]

<u>AccuLynx.com's pricing page:</u>	<u>XactLink.com's Pricing page:</u>
<p>"Users are . . . Owners, Administrative Personnel, Sales Representatives, Managers, Accounting Staff, Marketing Staff."</p>	<p>"Users are . . . Owners, Administrative Personnel, Sales Representatives, Managers, Accounting Staff, Marketing Staff."</p>
<p>"High Volume Pricing We offer discounts for high volume user accounts. Meaning, the more people you have utilizing the power of AccuLynx, the less you pay per person. Please contact us for details."</p>	<p>"High Volume Pricing We offer discounts for high volume user accounts. Meaning, the more people you have utilizing the power of XactLink, the less you pay per person. Please contact us for details."</p>
<p>"Pay-As-You-Go Payment is only required for as long as you are using the system. If at any time you choose to discontinue service with us, you can cancel with no fees or hidden charges."</p>	<p>"Pay-As-You-Go Payment is only required for as long as you are using the XactLink software. If at any time you choose to discontinue service with XactLink, you can cancel with no fees or hidden charges."</p>
<p>"No Contracts. . . . You can cancel your account with us at anytime with no hidden fees or strings attached. No commitments are required and feel free to take your data with you. Our goal is to create a lasting relationship with you. . . . We know you can leave us at any time so we will always be searching for new and better ways to help you!"</p>	<p>"No Contracts You can cancel your account with us at anytime with no hidden fees or strings attached. No commitments are required and feel free to take your data with you. Our goal is to create a lasting relationship with your company. . . . We know you can leave us at anytime so we will always be searching for new and inventive ways to help your business"</p>
<p>Both offer price breaks based on "1-5 users per month," "6-15 users per month," "16-30 users per month," "31-99 users per month," and " ≥ 100 users per month."</p>	<p>Both offer price breaks based on "1-5 users per month," "6-15 users per month," "16-30 users per month," "31-99 users per month," and " ≥ 100 users per month."</p>

(Acculynx.com's "Pricing" page is attached as Ex. G and XactLink.com's "Pricing" page is attached as Ex. H).

28. In addition, defendants also misappropriated content from AccuLynx.com's "Benefits" page, as quoted below:

<u>AccuLynx.com's benefits page:</u>	<u>XactLink.com's Benefits Page:</u>
<p>"3rd Party Storage"</p> <p>"We use state of the art cloud computing and offsite storage in order to safely and quickly store your data. Never worry about fires, server crashes, or theft of your files. . . . Import your data, images, estimates, and job paperwork into Acculynx. We will safely archive it and you can easily retrieve it from anywhere at anytime."</p> <p>"Real Time Connectivity"</p> <p>"AccuLynx connects all of your employees via the web, so when data is entered, team members can respond to it within minutes. New prospects are entered into Acculynx and submitted to your sales people in seconds. This ensures that the customer is contacted quickly. No more phone calls to check on drop dates or check material specs. . . . Keep the customer up to speed during the construction process."</p> <p>"Multi Leveled Profit Analysis"</p> <p>"Viewing your estimated margin has never been so easy. Why wait until you order or complete a job to know your profit margin? . . . Tighten up your profits through our one of a kind powerful profit analysis tools."</p> <p>"Free Immediate Upgrades"</p> <p>"As we grow and add new features and functions, users will inherit these upgrades free of charge and immediately. New feature announcements and a help module will accompany any idea we come up with. Tech Support is also available FREE to ensure you are always up to date on how to use AccuLynx to its max potential."</p>	<p>"3rd Party Storage"</p> <p>"We use state of the art offsite storage in order to safely and quickly store your data. Never worry about fires, server crashes, or theft of your files. Import your data, images, estimates, and job paperwork into XactLink. We will safely archive it and you can easily retrieve it from anywhere at anytime. . . ."</p> <p>"Real Time Connectivity. . . ."</p> <p>"XactLink connects all of your employees via the web, so when data is entered, team members can respond to it within minutes. New leads are entered into XactLink and submitted to your sales staff in seconds. This ensures that the customer is contacted quickly. No more phone calls to check on delivery dates. Keep the customer up to speed on their project during the construction process. . . ."</p> <p>"Multi Leveled Sales and Marketing Analysis"</p> <p>"Viewing your sales numbers, marketing strategies has never been this easy. Why wait until you order or complete a job to know your profit margin? Tighten up your profits through our revolutionary pre profit analysis tools."</p> <p>"Enhanced Upgrades to Our Software"</p> <p>"As we grow and add new features and functions, our clients will receive most upgrades free of charge and immediately. New feature announcements and a help guide will accompany any idea we come up with. Tech Support is also available FREE to ensure you are always up to date on how to use XactLink and its may features."</p>

(AccuLynx.com's "Benefits" page, Ex. E; XactLink.com's "Benefits" page, Ex. I).

29. Compare also the sites' privacy policies, which include substantial similarities:

<p style="text-align: center;"><u>AccuLynx.com's privacy policy:</u></p> <p>"AccuLynx.com, the Provider, has established this Privacy Statement to demonstrate our commitment to your privacy and to advise you of our standard policies regarding company data and business. ALL VISITORS, USERS AND CUSTOMERS OF THIS WEBSITE AGREE TO COMPLY WITH THE TERMS AND POLICIES STATED HEREIN. ALSO, ALL VISITORS, USERS AND CUSTOMERS ACKNOWLEDGE THAT THEY UNDERSTAND THE POLICIES STATED HEREIN AND CONSENT TO SUCH POLICIES. FURTHER, ALL VISITORS, USERS AND CUSTOMERS WARRANT THAT ANY DATA RETRIEVED THROUGH THIS SITE WILL NOT BE USED FOR MARKETING PURPOSES WITHOUT THE EXPRESS CONSENT OF THE PROVIDER. We have created this statement particularly because we gather some information from our visitors, users and customers and we want to explain our use and dissemination practices. We further intend to explain the responsibilities of all customers, users and visitors of this website. The privacy of our visitors, users and customers is of the utmost importance to us. Although, we reserve the right to change this statement at any time, we will always provide notification of any change to this statement. Please be advised that we post this statement to aid in your understanding of our business. <u>By interacting with our Site, all visitors, users and customers consent to the terms of this agreement.</u>"</p>	<p style="text-align: center;"><u>XactLink.com's privacy policy:</u></p> <p>"XactLink has established this Privacy Statement to demonstrate our commitment to your privacy and to advise you of our standard policies regarding company data and business. This privacy statement defines the privacy aspects for the http://www.xactlink.com/ Web site. In this statement <u>information</u> is identified as "your personal information. ALL VISITORS, USERS AND CUSTOMERS OF THIS WEBSITE AGREE TO COMPLY WITH THE TERMS AND POLICIES STATED HEREIN. ALSO, ALL VISITORS, USERS AND CUSTOMERS ACKNOWLEDGE THAT THEY UNDERSTAND THE POLICIES STATED HEREIN AND CONSENT TO SUCH POLICIES. FURTHER, ALL VISITORS, USERS AND CUSTOMERS WARRANT THAT ANY DATA RETRIEVED THROUGH THIS SITE WILL NOT BE USED FOR MARKETING PURPOSES WITHOUT THE EXPRESS CONSENT OF THE PROVIDER. This statement was created particularly because we gather information from our visitors, users and customers and we want to explain our use and dissemination practices. We further intend to explain the responsibilities of all customers, users and visitors of this website. The privacy of our visitors, users and customers is of the utmost importance to us. Although, we reserve the right to change this statement at any time, we will always provide notification of any change to this statement. Please be advised that we post this statement to aid in your understanding of our business. <u>By interacting with our Site, all visitors, users and customers consent to the terms of this agreement.</u>"</p>
---	--

(AccuLynx.com's privacy policy, Ex. C; XactLink.com's privacy policy, Ex. J).

30. Ironically, defendants even copied AccuLynx's online copyright policy, changing the company's name and the copyright notice affixed to the bottom of the policy. (See AccuLynx.com's copyright policy, Ex. K; XactLink.com's copyright policy, Ex. L).

Misappropriation of content from AccuLynx's Press Release

31. Defendants even went so far as to copy certain content from an AccuLynx press release dated April 14, 2009, and republish it within XactLink's December 20, 2010, press release:

<u>AccuLynx's 4/14/09 press release:</u>	<u>XactLink's 12/20/10 press release</u>
<p>"Have you ever wondered why no one has created a total business management software for roofing contractors?</p> <p>Wonder no more.</p> <p>AccuLynx.com has arrived to solve the problem.</p> <p>AccuLynx was created with roofers in mind; it was built to help roofers run their business better. The innovative, state-of-the-art system is a 100% Web-Based "Software as a Service" construction management tool designed to help roofers manage their entire business.</p> <p>By using AccuLynx, you can easily organize leads; diagram roofs; create estimates in minutes, not hours; track the production of jobs; and report anything and everything that is important to their business operation.</p> <p>Acculynx allows roofers to obtain "True Accounts Receivable". . . .</p> <p>The program also gives you the ability to print purchase orders and crew work orders. . . .</p> <p>Try it free for 30 days. . . ."</p>	<p>"Have you ever wondered why no one has created a total business management software for roofing contractors. . . ?</p> <p>Wonder no more.</p> <p>XactLink.com has arrived to solve the problem.</p> <p>XactLink was created with roofers and contractors in mind; it was built to help roofers and contractors run their business better. The innovative, state-of-the-art system is a 100% Web-Based "Software as a Service" construction management tool designed to help roofers and contractors manage their entire business.</p> <p>By using XactLink, you can easily organize leads, diagram roofs, track the production of jobs; report sales numbers, marketing expenditures and almost everything that is important to their business operation.</p> <p>XactLink allows their customers to obtain "True Accounts Receivable". . . .</p> <p>The program also gives you the ability to print purchase orders and crew work orders. . . .</p> <p>Try it free for 30 days. . . ."</p>

(Compare Ex. M, AccuLynx's press release posted on SEOpresreleases.com, with Ex. N, XactLink's press release also posted on SEOpresreleases.com).

32. Defendants published their press release on SEOPressreleases.com, which is a third-party marketing website that publishes press releases for a monthly fee. Substantial content of XactLink's press release was clearly copied from plaintiff's own press release, which was hosted on SEOPressreleases.com 18 months prior to defendants' publication of its press release.⁴

33. XactLink's piracy and republication of the content from Acculynx's press release is likely to cause confusion or mistake as to the affiliation and connection of AccuLynx and XactLink or the sponsorship or approval of XactLink's services by AccuLynx.

34. Defendant Radcliff also posted links to the content he misappropriated from Acculynx.com on blogs and websites such as Twitter and Facebook, further passing off Acculynx's content as that of XactLink's.

35. The consumer confusion created by defendants' use of a similar name and practice of misappropriating plaintiff's intellectual property is exacerbated by the fact that the product sold by these competing companies is virtually identical. Both offer online roofing management software utilizing "cloud" technology. Both purport to provide the same basic features: an online program to provide "customer resource management," estimates, roof diagraming, mapping, scheduling, assignment of sales reps, off site data storage, management of purchase orders, data analysis, and reports.

36. Defendants are about to further distribute misappropriated content, and further dilute plaintiff's brand by appearing at the International Roofing Expo in Las Vegas, scheduled for February 16-18, 2011. (*See* Xactlink.com's "upcoming events"). This International Roofing Expo

⁴ Although AccuLynx did not register the content of its press release for copyright protection, SEOPressreleases.com did (*See* Ex. M). Defendants' violation of SEOPressreleases.com's copyright demonstrates that defendants are prolific copyright abusers.

is billed as the single “largest roofing industry gathering.” (*See* theroofingexpo.com). This is the same roofing expo that plaintiff has attended for the past two years, resulting in a large percentage of plaintiff’s business. Plaintiff plans to attend this trade show again this year.

COUNT I
(Copyright Infringement: 17 U.S.C. § 501)

37. Plaintiff restates and incorporates the allegations set forth in paragraphs 1 through 36 as this paragraph 37 of Count I of its Verified Complaint.

38. Plaintiff is the exclusive owner of the rights to the original content hosted on its website, and all associated derivative works, which are the subject of copyright protection under United States law.

39. No license or authorization has been granted to defendants or their agents to copy, display, or create derivative works from any of plaintiff’s copyrighted content.

40. Plaintiff has at all times published the subject content in compliance with copyright laws, with notice of its copyrights prominently displayed.

41. Defendants have willfully infringed plaintiff’s copyrights with the intent to commercially exploit plaintiff’s copyrighted material, to which defendants have no legal or proprietary right.

42. Defendants have engaged in unfair trade practices and unfair competition in connection with their website, XactLink.com, and other third party sites.

43. If defendants’ actions continue, plaintiff will suffer irreparable harm of a continuing nature for which there is no plain, speedy or adequate remedy at law.

44. Defendants’ acts of copyright infringement will continue unless defendants are enjoined from further committing wrongful acts.

45. By reason of defendants' infringements, plaintiff has sustained injury, loss and damage in an amount yet to be ascertained and defendants have unlawfully derived and will continue to derive a commercial advantage from these infringing acts, enriching defendants in an unjust manner.

46. Defendants' infringing acts have been performed intentionally and willfully, with full knowledge of plaintiff's copyrights and the tortious effect its conduct would have on plaintiff, an Illinois corporation.

WHEREFORE, Plaintiff, ExactLogix, Inc., d/b/a AccuLynx.com, respectfully requests that this Court enter judgment in its favor and against defendants, XactLink LLC, Fortuna Logistics, LLC, and Joeseeph M. Radcliff:

- (a) preliminarily and permanently enjoining Joeseeph M. Radcliff, XactLink LLC, and Fortuna Logistics, LLC, directly or indirectly, alone or in concert with others, including any agent, employee and/or representative (including the hosts of XactLink.com, as well as third party web sites utilized by defendants), from:
 - (i) infringing in any manner the copyrights of plaintiff, including from copying, creating derivative works from, publishing, producing, linking to, or otherwise using in their business any material that is subject to plaintiff's copyrights;
 - (ii) copying, creating derivative works from, displaying, or distributing the infringed works or other proprietary materials of AccuLynx's;
- (b) ordering defendants to immediately produce an accounting for all gains, profits, and advantages derived by defendants as a result of their infringement of plaintiff's copyrights;
- (c) ordering defendants to pay to plaintiff its actual damages for copyright infringement pursuant to 17 U.S.C. §504(b);
- (d) ordering defendants to disgorge and pay to plaintiff all profits attributable to the infringement, pursuant to 17 U.S.C. §504(b);

- (e) awarding to plaintiff statutory damages of \$30,000 per work infringed pursuant to 17 U.S.C. §504(c)(1);
- (f) increasing the award of statutory damages to \$150,000 per work infringed as a result of defendants' willful infringement pursuant to 17 U.S.C. §504(c)(2);
- (g) awarding to plaintiff its costs and attorneys' fees, pursuant to 17 U.S.C. §505;
- (h) awarding to plaintiff prejudgment interest on all awards hereunder; and
- (i) any further relief the Court may deem just and appropriate.

COUNT II

(Digital Millennium Copyright Act: 17 U.S.C. §1202)

47. Plaintiff restates and incorporates the allegations set forth in paragraphs 1 through 46 as this paragraph 47 of Count II of its Verified Complaint.

48. Section 1202 of the Digital Millennium Copyright Act, ("DMCA") states:

- (a) **False copyright management information.-** No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement- (1) provide copyright management information that is false, or (2) distribute or import for distribution copyright management information that is false.
- (b) **Removal or alteration of copyright management information.-**No person shall, without the authority of the copyright owner or the law- (1) intentionally remove or alter any copyright management information, (2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or (3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

17 U.S.C. §1202.

49. By intentionally removing plaintiff's copyright management information, providing and distributing copyright management information that is false, and distributing unauthorized copies of plaintiff's content without authorization in an attempt to conceal defendants' infringement of plaintiff's copyrights, and by attempting to pass misappropriated content off as defendants' own copyright protected works, defendants violated the DMCA, 17 U.S.C. §1202.

WHEREFORE, Plaintiff, ExactLogix, Inc., d/b/a AccuLynx.com, respectfully requests that this Court enter judgment in its favor and against defendants, XactLink LLC, Fortuna Logistics, LLC, and Joeseeph M. Radcliff:

- (a) preliminarily and permanently enjoining Joeseeph M. Radcliff, XactLink LLC, and Fortuna Logistics, LLC, directly or indirectly, alone or in concert with others, including any agent, employee and/or representative (including the hosts of XactLink.com, as well as third party web sites utilized by defendants), from:
 - (i) removing, altering, or concealing the Copyright Management Information associated with AccuLynx's copyrighted materials;
 - (ii) associating Copyright management Information related to defendants with any of AccuLynx's copyrighted materials or any unauthorized derivative works created therefrom;
 - (iii) distributing or displaying any of AccuLynx's copyrighted materials or any unauthorized derivative works created therefrom without their full and proper Copyright Management Information, or otherwise in association with any Copyright Management Information related to defendants;
- (b) ordering defendants to immediately produce an accounting for all gains, profits, and advantages derived by defendants as a result of their violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1203(c)(2);

- (c) awarding to plaintiff its actual damages together with defendants' profits pursuant to 17 U.S.C. § 1203(c)(2);
- (d) awarding to plaintiff statutory damages under 17 U.S.C. § 1203(c)(3)(B) of \$25,000 for each violation of 17 U.S.C. § 1202; and
- (e) any further relief the Court may deem just and appropriate.

COUNT III
(Lanham Act: 15 U.S.C. §1125(a))

50. Plaintiff restates and incorporates the allegations set forth in paragraphs 1 through 49 as this paragraph 50 of Count III of its Verified Complaint.

51. Defendants are making deliberate use of the XactLink trade name that is a confusingly similar variation of the plaintiff's trademarked name, AccuLynx. Defendants are using the XactLink name in connection with defendants' business, with the intent to mislead the consuming public, members of which are likely to believe that XactLink is authorized, sponsored or affiliated with AccuLynx and/or ExactLogix, Inc., or that AccuLynx approves or is otherwise associated with the goods and/or services of XactLink.

52. Consumers' confusion and mistake as to the distinction between ExactLogix, Inc. d/b/a AccuLynx and Xactlink creates a substantial harm to plaintiff and unjustly enriches defendants.

53. In addition, by directing customers to Acculynx.com from sites sponsored by Xactlink and by pirating the content of AccuLynx's press release and the content of its website, defendants are misrepresenting the nature, characteristics, qualities and origin of their goods, services and commercial activities in commercial advertising or promotion, such that there is a likelihood of confusion as to the affiliation and association between XactLink and AccuLynx.

54. This use by defendants of the plaintiff-owned marks, or variations thereof, which is likely to deceive the public as to an affiliation between defendants' business and plaintiff's where

one does not exist, constitutes a violation of the Lanham Act, which provides:

(1) Any person who, on or in connection with any goods or services, . . . uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a).

55. Defendants have engaged in unfair competition, false or misleading advertising, and unfair or deceptive trade practices in violation of Section 43(a) of the Lanham Act where their above described conduct causes confusion and mistake by consumers with respect to the professional services provided by AccuLynx.com and XactLink.com.

56. Plaintiff will suffer irreparable harm and economic injury of a continuing nature for which there is no plain, speedy or adequate remedy at law if defendants are not enjoined from committing acts of unfair competition of the kind described above.

WHEREFORE, Plaintiff, ExactLogix, Inc., d/b/a AccuLynx.com, respectfully requests that this Court enter judgment in its favor and against defendants, XactLink LLC, Fortuna Logistics, LLC, and Joeseph M. Radcliff:

(a) preliminarily and permanently enjoining Joeseph M. Radcliff,

XactLink LLC, and Fortuna Logistics, LLC, directly or indirectly, alone or in concert with others, including any agent, employee and/or representative (including the hosts of XactLink.com, as well as third party web sites utilized by defendants), from:

- (i) publishing any material that suggests an affiliation, connection, sponsorship or approval between XactLink and AccuLynx or otherwise is likely to cause confusion or to deceive as to an affiliation, connection, or association between XactLink and AccuLynx or as to the origin, sponsorship or approval of XactLink's goods, services, or commercial activities by AccuLynx;
- (ii) using the names XactLink and "XactLink.com", or any confusingly similar variations of "ExactLogix" and/or "AccuLynx" in commerce;
- (b) ordering defendants to immediately produce an accounting for all gains, profits, and advantages derived by defendants as a result of their Lanham Act violations pursuant to 15 U.S.C. § 1117;
- (c) awarding to plaintiff its actual damages pursuant to 15 U.S.C. § 1117;
- (d) awarding to plaintiff its costs and attorneys' fees pursuant to 15 U.S.C. § 1117;
- (e) awarding prejudgment interest on all awards hereunder; and
- (f) any such other and further relief as the Court may deem just and appropriate.

COUNT IV

(Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2)

57. Plaintiff restates and incorporates the allegations set forth in paragraphs 1 through 56 as this paragraph 57 of Count IV of its Verified Complaint.

58. Defendants deliberately and willfully: (a) caused a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of defendants' business, goods and/or services; (b) caused a likelihood of confusion or misunderstanding as to the affiliation,

connection or association with or certification of defendants' business, goods and/or services by plaintiffs; and (c) engaged in deceptive trade practices designed to create confusion and to pass defendants' business, goods and/or services off as those of AccuLynx.

59. By the acts set forth herein, defendants are intentionally attempting to prey upon and steal the customer confidence and goodwill associated with AccuLynx's business and thereby compete unfairly with AccuLynx and deceive the public.

60. Defendants' actions constitute willful and intentional violations of the Illinois Uniform Deceptive Trade Practices Act as adopted in 815 ILCS 510/2.

61. Plaintiff has no adequate remedy at law and, if defendants are not enjoined, plaintiff will suffer irreparable harm to its business goodwill and reputation as a result thereof.

WHEREFORE, Plaintiff, ExactLogix, Inc., d/b/a AccuLynx.com, respectfully requests that this Court enter judgment in its favor and against defendants, XactLink LLC, Fortuna Logistics, LLC, and Joseph M. Radcliff:

- (a) preliminarily and permanently enjoining Joseph M. Radcliff, XactLink LLC, and Fortuna Logistics LLC, directly or indirectly, alone or in concert with others, including any agent, employee and/or representative (including the hosts of XactLink.com, as well as third party web sites utilized by defendants), from any actions that:
 - (i) cause a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of defendants' business, goods and/or services;
 - (ii) cause a likelihood of confusion or misunderstanding as to the affiliation, connection or association with or certification of defendants' business, goods and/or services by plaintiff;
 - (iii) pass off the business, goods and/or services of defendants as those of plaintiff;
- (b) awarding to plaintiff its reasonable costs and attorneys' fees pursuant

to 815 ILCS 510/3;

- (c) awarding to plaintiff its actual damages incurred as a result of defendants' deceptive trade practices; and
- (d) awarding such other relief as the Court deems just.

PLAINTIFF DEMANDS TRIAL BY JURY

Plaintiff, ExactLogix, Inc., d/b/a
AccuLynx.com., an Illinois corporation,

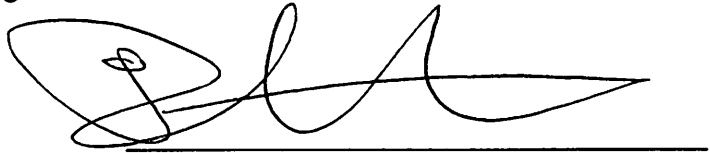
By WilliamsMcCarthy, LLP

By: /s/ Scott C. Sullivan

Scott C. Sullivan
Joel M. Huotari
WilliamsMcCarthy, LLP
120 West State Street, Suite 400
P. O. Box 219
Rockford, IL 61105-0219

Verification of Richard W. Spanton, Jr.

I, Richard W. Spanton Jr., CEO of plaintiff, ExactLogix. Inc., d/b/a AccuLynx.com, having contributed to and reviewed the forgoing Verified Complaint, hereby verify under penalty of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct, to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to be 'R. Spanton', written over a horizontal line.

Richard W. Spanton Jr.